

HOUSE BILL 2160

By Kelsey

AN ACT to amend Tennessee Code Annotated, Title 24, Chapter 7 and Title 40, Chapter 17, relative to evidence in certain actions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 24, Chapter 7, Part 1, is amended by adding the following as a new section thereto:

24-7-123.

(a) In any civil action alleging conduct which constitutes sexual harassment or sexual assault, opinion evidence, reputation evidence, and evidence of specific instances of the plaintiff's sexual conduct, or any such evidence, shall not be admissible by the defendant in order to prove consent by the plaintiff or the absence of injury to the plaintiff.

(b) Subsection (a) shall not be applicable to evidence of the plaintiff's sexual conduct with the alleged perpetrator.

(c) If the plaintiff introduces evidence, including testimony of a witness, or the plaintiff as a witness gives testimony, and the evidence or testimony relates to the plaintiff's sexual conduct, the defendant may cross-examine the witness who gives the testimony and offer relevant evidence limited specifically to the rebuttal of the evidence introduced by the plaintiff or given by the plaintiff.

(d) Nothing in this section shall be construed to make inadmissible any evidence of sexual conduct of the plaintiff if it is offered to attack the credibility of the plaintiff by using the following procedure:

(1) A written motion shall be made by the defendant to the court and the plaintiff's attorney stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the plaintiff proposed to be presented;

(2) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated;

(3) Before admitting evidence under this subsection (d), the court must conduct a hearing in camera and afford the plaintiff and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise; and

(4) At the conclusion of the hearing, if the court finds the evidence proposed to be offered by the defendant regarding the sexual conduct of the plaintiff is relevant under the Tennessee Rules of Evidence, and is not inadmissible, the court may make an order stating what evidence may be introduced by the defendant, and the nature of questions to be permitted. The defendant may then offer evidence pursuant to the order by the court.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.